

12 GPNE CORP.,  
13 Plaintiff,  
14 v.  
15 APPLE INC.,  
16 Defendant.

Case No.12-CV-02885-LHK

**ORDER GRANTING SEALING  
MOTION**

Re: Dkt. No. 597

18 Before the Court is Defendant's administrative motion to seal, ECF No. 597, an exhibit  
19 submitted in support of Defendant's bill of costs. For the reasons discussed below, the Court finds  
20 that Defendant has shown good cause to seal portions of an exhibit attached to a nondispositive  
21 motion and therefore GRANTS Defendant's motion to seal.

22 "Historically, courts have recognized a 'general right to inspect and copy public records  
23 and documents, including judicial records and documents.'" *Kamakana v. City & Cnty. of  
Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435  
25 U.S. 589, 597 & n.7 (1978)). Accordingly, when considering a sealing request, "a strong  
26 presumption in favor of access is the starting point." *Id.* (internal quotation marks omitted).

27 Parties seeking to seal judicial records relating to dispositive motions bear the burden of  
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1 overcoming the presumption with “compelling reasons supported by specific factual findings” that  
2 outweigh the general history of access and the public policies favoring disclosure. *Kamakana*, 447  
3 F.3d at 1178–79. Compelling reasons justifying the sealing of court records generally exist “when  
4 such ‘court files might have become a vehicle for improper purposes,’ such as the use of records to  
5 gratify private spite, promote public scandal, circulate libelous statements, or release trade  
6 secrets.” *Id.* at 1179 (quoting *Nixon*, 435 U.S. at 598). However, “[t]he mere fact that the  
7 production of records may lead to a litigant’s embarrassment, incrimination, or exposure to further  
8 litigation will not, without more, compel the court to seal its records.” *Id.* Dispositive motions  
9 include “motions for summary judgment.” *Id.*

10 Records attached to nondispositive motions are not subject to the strong presumption of  
11 access. See *Kamakana*, 447 F.3d at 1179. Because the documents attached to nondispositive  
12 motions “are often unrelated, or only tangentially related, to the underlying cause of action,”  
13 parties moving to seal must meet the lower “good cause” standard of Rule 26(c) of the Federal  
14 Rules of Civil Procedure. *Id.* at 1179–80 (internal quotation marks omitted). The “good cause”  
15 standard requires a “particularized showing” that “specific prejudice or harm will result” if the  
16 information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,  
17 1210–11 (9th Cir. 2002) (internal quotation marks omitted); see Fed. R. Civ. P. 26(c). “Broad  
18 allegations of harm, unsubstantiated by specific examples of articulated reasoning” will not  
19 suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

20 Pursuant to Rule 26(c), a trial court has broad discretion to permit sealing of court  
21 documents for, inter alia, the protection of “a trade secret or other confidential research,  
22 development, or commercial information.” Fed. R. Civ. P. 26(c)(1)(G). The Ninth Circuit has  
23 adopted the definition of “trade secrets” set forth in the Restatement of Torts, holding that “[a]  
24 trade secret may consist of any formula, pattern, device or compilation of information which is  
25 used in one’s business, and which gives him an opportunity to obtain an advantage over  
26 competitors who do not know or use it.” *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972)  
27 (quoting Restatement (First) of Torts § 757 cmt. b). “Generally [a trade secret] relates to the  
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1 production of goods. . . . It may, however, relate to the sale of goods or to other operations in the  
2 business. . . .” *Id.* (ellipses in original). In addition, the Supreme Court has recognized that sealing  
3 may be justified to prevent judicial documents from being used “as sources of business  
4 information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 598.

5 In addition, parties moving to seal documents must comply with the procedures established  
6 by Civil Local Rule 79-5. Pursuant to that rule, a sealing order is appropriate only upon a request  
7 that establishes the document is “sealable,” or “privileged or protectable as a trade secret or  
8 otherwise entitled to protection under the law.” Civ. L. R. 79-5(b). “The request must be narrowly  
9 tailored to seek sealing only of sealable material, and must conform with Civil L.R. 79-5(d).” *Id.*  
10 Civil Local Rule 79-5(d), moreover, requires the submitting party to attach a “proposed order that  
11 is narrowly tailored to seal only the sealable material” and that “lists in table format each  
12 document or portion thereof that is sought to be sealed,” as well as an “unredacted version of the  
13 document” that “indicate[s], by highlighting or other clear method, the portions of the document  
14 that have been omitted from the redacted version.” *Id.* R. 79-5(d)(1). “Within 4 days of the filing  
15 of the Administrative Motion to File Under Seal, the Designating Party must file a declaration as  
16 required by subsection 79-5(d)(1)(A) establishing that all of the designated material is sealable.”  
17 *Id.* R. 79-5(e)(1).

18 Here, the portions of the documents that Defendant seeks to file under seal are specific line  
19 items from third-party e-discovery vendor invoices. Defendant has submitted these invoices in  
20 support of its bill of costs. *See Declaration of Christopher O. Green*, ECF No. 596-16, Exh. O. As  
21 this is a nondispositive motion, the Court applies the “good cause” standard to Defendant’s  
22 request. *See Kamakana*, 447 F.3d at 1179. The Court finds that Defendant has made a  
23 “particularized showing” that “specific prejudice or harm will result” if certain confidential terms  
24 of Defendant’s financial relationship with its e-discovery vendor are made public. *See Phillips ex*  
25 *rel. Estates of Byrd*, 307 F.3d at 1210–11. Accordingly, the Court GRANTS Defendant’s motion to  
26 seal as to the proposed redactions to Exhibit O.

1 IT IS SO ORDERED.  
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3 Dated: July 16, 2015  
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LUCY H. KOH  
United States District Judge

United States District Court  
Northern District of California